



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

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STATE OF NEW HAMPSHIRE
WATER COUNCIL

Decision & Order

Docket No. 03-19 WC

Appeal of Pennichuck Brook Watershed Council
In Re: Site Specific Permit No. WPS-6467

Motion to Waive Administrative Rules

and

Notice of Appeal

Background

By letter dated June 13, 2003 the Pennechuck Brook Watershed Council ("PBWC") requested the Department of Environmental Services, Subsurface Systems Bureau ("DES") reconsider the issuance of all septic system and other permits related to the proposed Summerfield Condominium development in Amherst, NH ("the Project"). Based on procedural guidelines provided by DES, on July 14, 2003, the PBWC filed a Motion for Reconsideration with DES pursuant to RSA 485-A:40, I and II.

On November 5, 2003 DES issued a decision on Reconsideration ("the Decision") relative to the Motion for Reconsideration. By its decision, DES denied reconsideration of the issuance of the Site Specific Permit. In the decision DES informed PBWC that pursuant to RSA 21-O:7, IV and Env-WC 203.02, the PBWC shall have 30 days from the date of the decision to appeal the affirmation of Site Specific Permit #WPS-6467 to the Water Council. By its decision, DES also denied reconsideration of the issuance of subdivision and sewage disposal system approvals. In the decision DES informed PBWC that pursuant to RSA 485-A:40, IV, the PBWC shall have 30

days from the date of the decision to appeal the affirmation of the subdivision and septic system approvals by petition to the Superior Court.

On December 8, 2003, Dr. Allan Fuller filed, on behalf of PBWC, a Motion to Waive Administrative Rules (“Motion to Waive”) and a Notice of Appeal (“the Notice”) with the NH Water Council (“the Council”). The notice was appealing the DES affirmation of the November 5, 2003 decision. The notice was not only appealing that portion of the DES decision relative to Site Specific Permit No. WPS-6467, but also DES Subdivision Approval #SA2003004123 and DES Subsurface Sewage Disposal Septic System Approvals #CA2003052543.

Discussion/Conclusion

The Council concludes that the DES decision was clear with regards to the appeals procedure available to PBWC relative to the issuance of Site Specific Permit No. WPS-6467 and DES Subdivision Approval #SA2003004123 and DES Subsurface Sewage Disposal Septic System Approvals #CA2003052543. The DES notice clearly stated that pursuant to RSA 21-O:7, IV and Env-WC 203.02, the **PBWC shall have 30 days from the date of the decision to appeal the affirmation of Site Specific Permit #WPS-6467 to the Water Council.** The DES notice clearly stated that that pursuant to RSA 485-A:40. IV, the **PBWC shall have 30 days from the date of the decision to appeal the affirmation of the subdivision and septic system approvals by petition to the Superior Court.** The Council further concludes that by filing a Notice of Appeal with the Council on December 8, 2003 PBWC did not comply with the 30 day filing requirement as specified by Council Rule Env-WC 203.02.

Order

The PBWC Motion to Waive Administrative Rules is **DENIED** and the Notice of Appeal is **SUMMARILY DISMISSED**

Pursuant to Env-WC 203.29(a), any person whose rights might be directly affected by this decision may file a motion for rehearing within 30 days of the date of this decision. The motion

must contain the information specified in Env-WC 203.29(b). Copies of any motion for rehearing shall also be sent or delivered to all other parties of record. Pursuant to Env-WC 203.29(e), this decision shall become final if no motion for rehearing is filed within 30 days.

COPY

So Ordered for the Council by: _____ December 11, 2003
Michael Sclafani, Appeals Clerk